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RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DES 2-4 AVRIL 2007

établi par le Bureau Permanent

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REPORT OF THE COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE OF 2-4 APRIL 2007

drawn up by the Permanent Bureau

Document préliminaire No 1 de juillet 2007 à l'intention du Conseil d'avril 2008 sur les affaires générales et la politique de la Conférence (initalement diffusé comme Doc. prél. No 24 à l'intention de la Commission I de la Vingt-et-unième session de novembre 2007)

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RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DES 2-4 AVRIL 2007

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RECOMMANDATIONS ET CONCLUSIONS ADOPTÉES PAR LE CONSEIL /

RECOMMENDATIONS AND CONCLUSIONS ADOPTED BY THE COUNCIL

RECOMMENDATIONS AND CONCLUSIONS

ADOPTED BY THE COUNCIL

Admission of the European Community

1. The Council, acting in accordance with the revised Statute, accepted by consensus the application of the European Community for membership of the Hague Conference. Following the deposit of the instrument of acceptance of the Statute by the President of the Council of the European Union, the Council welcomed the European Community as a Member of the Organisation.

Future work

2. The Council decided to retain the following matters on the Conference's Agenda:

a) questions of private international law raised by the information society, including electronic commerce,

b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage,

c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death,

d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples,

e) assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations.

3. The Council decided to invite Members to provide comments, before the end of 2007, on the feasibility study on cross-border mediation in family matters (Prel. Doc. No 20) with a view to further discussion of the topic at the spring 2008 meeting of the Council.

4. The Council invited Members who have not already done so to respond to the Questionnaire concerning choice of law in international contracts and to provide comments on the existing feasibility study (Prel. Doc. No 22) by the autumn of 2007 with a view to further discussion of the topic at the spring 2008 meeting of the Council.

5. The Council invited the Permanent Bureau to develop a questionnaire as suggested in the feasibility study on the treatment of foreign law (Prel. Doc. No 21) with a view to identifying practical difficulties in accessing the content of foreign law and determining the areas of foreign law for which information is required. This questionnaire will also invite Members to comment on the models suggested in the feasibility study and their possible implementation. Responses should be returned before the end of 2007 with a view to further discussion of the topic at the spring 2008 meeting of the Council.

6. The Council reserved its position on the ultimate priority to be attached to each of the possible subjects for future work referred to above, in particular those mentioned in paragraphs 3-5, as well as on the possibility of adding other subjects and otherwise revisiting the list at a later meeting. In this respect, the Council invited the Permanent Bureau to continue its exploration of the application of certain private international law techniques to aspects of international migration.

Information technology systems in support of Conventions

7. The Council welcomed the continued efforts of the Permanent Bureau in relation to the use and the development of information technology systems in support of existing and draft Hague Conventions in the areas of legal co-operation and family law. Members were encouraged to continue exploring possible sources of funding including through the Supplementary Budget.

Post-Convention services and regional developments

8. The Council noted the broad range and importance of the post-Convention activities currently being carried out by the Permanent Bureau, including by way of the development of regional programmes.

9. The Council welcomed the range of activities currently being undertaken by the Permanent Bureau in the areas of promotion, education and training in relation to the Hague Conventions, and in particular the development of the International Centre for Judicial Studies and Technical Assistance, made possible by generous funding through the Supplementary Budget.

10. The Permanent Bureau was encouraged to continue its efforts in these regards with a view to securing more universal acceptance of the Conventions and their effective operation in different parts of the world.

Draft Convention on the international recovery of child support and other forms of family maintenance

11. The Council noted the progress being made in the development of the new Convention on the international recovery of child support and other forms of family maintenance. It reaffirmed its view that the negotiation process should be inclusive, and encouraged Members to consider responding to the request for supplementary funding to make possible the participation of certain experts. The Council also noted that the Government of the Netherlands had issued a convocation to the Members for the Twenty-first Session of the Hague Conference on Private International Law, scheduled to take place from 5-23 November 2007, at which the final text of the Convention would be drawn up.

ORDRE DU JOUR / AGENDA

AGENDA

MEETING OF THE COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE

(2-4 April 2007)

I. Follow-up on the results of the Twentieth Session of the Conference (see Final Act of the Twentieth Session, 30 June 2005)

1. Parts A and B: Convention on Choice of Court Agreements.

   Oral remarks by the Secretariat.

2. Part C: Amendments to the Statute and related decisions taken by the Session.

   The Secretary General will present oral remarks.

II. Admission of the European Community to the Conference (see Final Act of the Twentieth Session, part C.6)

3. Decision to be taken in conformity with Article 3 of the amended Statute.

III. Preparation of the Twenty first Session of the Conference

4. Preparation of a Convention on the International Recovery of Child Support and other Forms of Family Maintenance (see Final Act, Nineteenth Session, under C.1).

   Progress report on the development of a new international instrument on the International Recovery of Child Support and other Forms of Family Maintenance.

IV. Round table on progress made concerning the ratification of and accession to Conventions

5. Convention adopted by the Nineteenth Session (2002): *Convention of 5 July 2006 on Law Applicable to Certain Rights in respect of Securities held with an Intermediary.*

6. Conventions adopted by the Eighteenth Session (1996) and by the Special Commission with a Diplomatic Character (1999):

   (a) *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children;* and

   (b) *Convention of 13 January 2000 on the International Protection of Adults*.

7. Conventions adopted by previous Sessions:

   the following Conventions are proposed, in particular, for discussion:

   (a) *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents;*

   (b) *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*;

(c) *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*;

(d) *Convention of 25 October 1980 on International Access to Justice*;

(e) *Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.*

V. Promotion, monitoring, assistance and support of Conventions: Conventions in the areas of commercial and finance law, and on legal co-operation and litigation

8. *Report on the activities on the Conventions on legal co-operation and, in particular,* Apostille*, Service Abroad and the Taking of Evidence (see Final Act, Nineteenth Session, under C.4.a) and b)*:

(a) Progress report on the e-Apostille Pilot Program;

(b) Practical Handbook on the Service Convention: publication in other languages than English and French;

(c) seminars and (judicial) training activities.

9. *Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America*.

VI. Promotion, monitoring, assistance and support of Conventions: Conventions on International Protection of Children, Vulnerable Adults, International Family and Family Property Relations

10. *Report on the activities in relation to the Conventions of 1980, 1993 and 1996 and, in particular:*

(a) Special Commission of October-November 2006 on the practical operation of the International Child Abduction Convention and the implementation of the 1996 Convention, including progress in relation to Guides to Good Practice;

(b) progress with the implementation assistance programme for the 1993 Convention and follow-up on the Special Commission of 2005 on the Practical operation of the 1993 Convention;

(c) INCADAT, INCASTAT and iChild;

(d) seminars and (judicial) training activities.

11. *Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America.*

VII. Promotion, education and training – establishing a systematic Hague Conference international training programme; a Hague Conference International Centre for Judicial Studies and Technical Assistance

12. *The Secretariat will offer oral remarks.*

VIII. Future work: new topics

13. *Under this heading there will be a discussion of any new topics which may be suggested by the governments, the international organisations or the Permanent Bureau.*

The Secretary General suggests that, if possible, the Council prioritise two topics for which there is a pressing global need for future work, both in the areas of either commercial and finance law or legal co-operation and litigation, and in the field of international protection of children, vulnerable adults, international family and family property relations, including successions.

See Annex I for:

- topics retained in the Conference's agenda for future work (Final Act of the Nineteenth Session, under C.3);
- topics informally suggested to the Permanent Bureau.

Reports will be presented on the feasibility studies:

- on the development of an instrument concerning choice of law in international contracts;
- on cross-border mediation in family matters;
- on the development of a new instrument for cross-border co-operation concerning the treatment of foreign law.

IX. Organisation of the work of the Conference (see Final Act, Nineteenth Session under B)

14. The Strategic Plan.

Report on progress by the Secretariat.

15. Proposed Budget for Financial Year LIII (1 July 2007 – 30 June 2008).

Proposed Budget for Financial Year LIII (1 July 2007 – 30 June 2008) and Explanatory Notes.

16. Supplementary Budget for Financial Year LIII (1 July 2007 – 30 June 2008).

Proposed Supplementary Budget for Financial Year LIII (1 July 2007 – 30 June 2008) and Explanatory Notes.

X. Co-operation with other international organisations

17. Co-operation with UNCITRAL and UNIDROIT.

The Secretariat will offer oral remarks.

18. Co-operation with other international organisations.

The Secretariat will offer oral remarks.

Final Act of the Nineteenth Session, Part C.3:

"**C The following Decisions on matters pertaining to the Agenda of the Conference –**

(…)

3. Decides to retain in the Conference's Agenda for future work –

a) questions of private international law raised by the information society, including electronic commerce,

and, without priority –

b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage,

c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death,

d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples,

e) the law applicable to unfair competition,

f)[1] assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations."

Topics informally suggested to the Permanent Bureau:[2]

- continuation of the Judgments Project, possibly through additional Protocols to the Convention on Choice of Court Agreements, a model law or model (bilateral) agreements;
- formulation of "principles of choice of law" for international contracts;
- development of a practical guide on comparative private international law (on a country-by-country or subject-by-subject basis);
- development of model bilateral agreements to facilitate the implementation of (multilateral) Hague Conventions;
- questions of private international law in relation to intellectual property issues;
- the international recovery of assets relevant to criminal law enforcement as well as to ordinary claims, and which is related to aspects of provisional and protective measures;
- legal issues relating to economic migrants;
- questions in relation to status of children (excluding adoption), in particular recognition of parent-child relationships (*filiation*);
- international mediation in family matters;
- Conventions (or model laws) on the law applicable to specific contracts (barter transactions; trading in futures on a stock exchange);

[1] As amended by the Special Commission on General Affairs and Policy of 1-3 April 2003.
[2] See, in particular, Preliminary Document No 20 for the attention of the Nineteenth Session: "Observations concerning the Strategy of the Hague Conference – Observations made by other international organisations and observations made in a personal capacity in response to the Secretary General's letter of 30/31 July 2001".

- cross-border regulatory issues: how to preserve, through international co-operation and mutual enforcement, the integrity of the growing variety of regulatory systems in a converging world;
- development of a worldwide system for administrative and judicial co-operation concerning exchange of information on foreign law.

RAPPORTS DE SÉANCE / REPORTS OF MEETING

Council on General Affairs and Policy of the Conference (2-4 April 2007)

HccH
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 1

Distribution: by e-mail

MEETING OF MONDAY 2 APRIL 2007 – MORNING SESSION

The meeting was opened at 9.50 a.m. by Mr Struycken (President of the Netherlands Standing Government Committee on Private International Law).

Mr Struycken welcomed the experts and the representatives of the invited international organisations. He expressed his joy in opening the first session of the Council of General Affairs and Policy of the Hague Conference on Private International Law at the new building of the Hague Academy of International Law which was inaugurated by Her Majesty the Queen Beatrix on 18 January 2007.

Mr Struycken briefly recalled the history of the Statute of the Hague Conference. He underscored that it was during the Special Commission on General Affairs and Policy of May 2000 that the question of reviewing the Statute arose. On the one hand, this was due to the fact that deliberations in the Hague Conference were marked by the evolution of the European Community. On the other hand, there was a will of the Member States to see the meetings of the Special Commission convened on an annual basis and to become the governing body of the Hague Conference.

He highlighted the importance of Article 3 of the new Statute, which entered into force on 1 January 2007, and underlined that from now on the governing body is the Council on General Affairs and Policy of the Hague Conference and no longer the Netherlands Standing Government Committee. Mr Struycken reassured the participants that the good practices of the Hague Conference will continue to be followed and thanked the Permanent Bureau for the quality of their work.

Mr Struycken proposed that Mr Antti Leinonen (Finland) preside over the Council. This proposal was unanimously accepted.

Mr Struycken indicated that this meeting is the beginning of a new era for the Hague Conference which will offer membership not only to States but also to Regional Economic Integration Organisations, the European Community being the first Regional Economic Integration Organisation to be admitted as a Member. He reminded the participants that the preparation of this admission was initiated on 11 May 2000 by the late Mrs Isabel de Magalhaes Collaço, then the representative of the Portuguese Presidency of the Council of the European Union. He recalled that the consultations of the informal advisory group which was convened in January and December 2004 under the skilful chairmanship of Mrs Xue Hanqin, the Ambassador of China to the Netherlands, were very helpful in preparing the Hague Conference for the admission of Regional Economic Integration Organisations, and particularly the European Community, as a Member. He announced that the final step for the admission of the European Community will be realised on Tuesday 3 April 2007. He proposed that the

participants would accept that this part of the meeting would be presided over by Mrs Xue Hanqin. This proposal was also unanimously accepted.

Mr. Leinonen took the chair and thanked the Council for its confidence in him and indicated that, since his first attendance eight years ago to the Special Commission on General Affairs and Policy, he had always been impressed by the quality of the work of the Permanent Bureau, by the high expertise of the experts, and by the professionalism of the interpretation. He added that he would try to lead the discussions with the same discipline as the former Chair, Ms Jametti Greiner (Switzerland). He proposed that discussion should begin based on the Agenda and indicated that the discussions will start with parts I, III, IV and VIII. This proposal was accepted.

The Secretary General welcomed the participants to the new premises of the Hague Academy of International Law. He apologised for the delay in the release of certain preliminary documents, due to the fact that the drawing up of three feasibility studies, in addition to an already heavy program, had been a real "tour de force" for the Permanent Bureau.

The Chair invited Ms Schulz (First Secretary) to make an intervention, under Agenda item I.1, on the *Convention on Choice of Court Agreements*.

I. FOLLOW-UP ON THE RESULTS OF THE TWENTIETH SESSION OF THE CONFERENCE

1. Parts A and B: Convention on Choice of Court Agreements

Ms Schulz (First Secretary) reminded the participants that the Twentieth Session adopted the Convention unanimously on 30 June 2005. She indicated that the first draft of the Explanatory Report by Professors Trevor Hartley (United Kingdom) and Masato Dogauchi (Japan) was submitted and circulated to the delegations for consultations in May 2006. This draft was revised and circulated on 22 December 2006. She informed the Council that the final version of the Report is imminent. She also added that this Convention, even though it has not yet been signed by any States, is already being cited by judges. She indicated that the Permanent Bureau was confident that the delegations will accept the second draft as the final Explanatory Report.

Some experts highlighted the importance of the Explanatory Report and that they looked forward to its imminent publication. Some of these experts indicated that the impact of its signature and ratification are currently being studied and that a positive outcome was expected.

2. Part C: Amendments to the Statute and related decisions taken by the Session

The Secretary General referred the participants to Part C of the Final Act of the Twentieth Session of the Hague Conference, and particularly to the amendments to the Statute, the adoption of the English version of the Statute, the amendment procedure adopted, the Rules of Procedure of the Hague Conference and the declaration to be submitted by the European Commission. He further indicated that the new Statute had been adopted by two-thirds of Member States on 30 September 2006 and that it had entered into force on 1 January 2007. He underlined that the Declaration of competence of the European Community sent to the Permanent Bureau had been distributed in February 2007 to Member States. He added that no comments were received concerning this declaration. He was confident, therefore, that there would be no obstacles during the debate tomorrow for the admission of the European Community to the Hague Conference.

III. PREPARATION OF THE TWENTY-FIRST SESSION OF THE HAGUE CONFERENCE

4. Preparation of a Convention on the International Recovery of Child Support and other Forms of Family Maintenance

The Deputy Secretary General referred to the progress report (Prel. Doc. No 17) to which the preliminary draft Convention is annexed. He summarised the history of the negotiations and indicated that the preliminary draft Convention and the observations of the Drafting Committee were circulated in January 2007.

He explained that the Fifth meeting of the Special Commission on Maintenance Obligations, which will be held from 8 to 16 May 2007, will have a limited agenda as only three issues will be dealt with: applicable law, access to procedure and procedure for recognition and enforcement. He added that Mr Andrea Bonomi (Switzerland), who presides over the Working Group on Applicable Law, has prepared a report which will be circulated shortly.

The Deputy Secretary General announced that the Diplomatic Session will be held from 5 to 23 November 2007 which gives plenty of time for States to make their comments to the Permanent Bureau, which will in turn prepare a list of proposed amendments.

He added that the Co-Reporters Mrs Alegría Borrás (Spain) and Ms Jennifer Degeling (Permanent Bureau, formerly expert of Australia) were finalising the draft Explanatory Report.

He highlighted that there is already a great deal of consideration being given to post-Convention services such as a Special Commission for the practical implementation of the Convention 18 months following the adoption of the Convention and the drawing up of a Guide to Good Practice.

Mr Lortie (First Secretary) reviewed the work of the Forms Committee and highlighted that in the current preliminary draft the transmittal Forms for applications under Article 10 would be compulsory. However, he explained that no final decision has yet been taken as to whether other forms such as the Acknowledgement Form or Application Forms would be compulsory or simply strongly recommended. He added that it is crucial that the text of the Convention be flexible and "ICT neutral" in order to allow an effective implementation.

On the work of the Sub-Committees of the Administrative Co-operation Committee (the Sub-Committee in charge of the Practical Operation of the Convention and the Sub-Committee on State Profiles), he underlined the importance of post-Convention services and of the establishment of a Central Authority network for the implementation of the Convention. He explained that the use of forms contributes towards a better co-operation between Central Authorities and limits the difficulties related to translation. He informed the participants that the Permanent Bureau presented the electronic case management and communication system during a recent meeting of the Administrative Co-operation Committee in London. He called for additional financial resources to support this project. Finally he underlined the importance of the participation of as many States as possible to the November 2007 Diplomatic Session.

The Chair reiterated the importance of financial support from Member States in order to allow for the participation of as many States as possible to the Diplomatic Session.

A representative of the European Union (Council) thanked the Permanent Bureau for all the work and expressed his enthusiasm for the realisation of the up-coming steps in view of the adoption of the Convention.

The Secretary General insisted on the importance of the presence of many States at the 2007 Diplomatic Session. He thanked the States which already generously financially contributed to the participation of certain delegations. He highlighted that this support is indispensable to the participation of many developing countries in discussions held in The Hague.

IV. ROUND TABLE ON PROGRESS MADE CONCERNING THE RATIFICATION OF AND ACCESSION TO CONVENTIONS

5. *Convention adopted by the Nineteenth Session (2002):* Convention of 5 July 2006 on Law Applicable to Certain Rights in respect of Securities held with an Intermediary

Mr Bernasconi (First Secretary) indicated that the signing of the Convention by Switzerland and the United States of America on 5 July 2006 had given the Convention its date. He added that the Convention is pending with the Parliament of Lebanon and that there are active discussions in the Americas, especially in Latin America. He underlined that the INDEVAL Board (Mexican Central Securities Depository), the Brazilian Securities Commission and ACSDA (Americas' Central Securities Depositories Association) formally endorsed the adoption of the Convention by their national Governments.

He highlighted that the Convention has no impact on existing or future regulatory regimes controlling the conduct of intermediaries, whether those regimes are directed toward the goals of preventing money laundering, preventing tax evasion, assuring safe and sound business practices or minimising systemic risk. He explained that the Convention merely provides for a specified and limited consequence to behaviour in which the parties to an account agreement may or may not engage. The Convention does not however grant an absolute freedom to these parties to choose any law they wish, if for reasons imposed by competent regulatory or other supervisory authorities, the law in question may not be chosen by the parties. Finally he explained that, for the reasons stated above, supervisory authorities are, within the scope of their power, free to prohibit intermediaries from agreeing on any governing law, or from agreeing on a particular governing law, or agreeing on a governing law other than the law specified by the authority.

The experts from Switzerland and the United States of America informed the Council that the issue of ratification of the Convention should be decided within the year.

A representative of the European Community (Council) informed the Council on the internal difficulties related to the new conflict of laws regime established by the Convention and indicated that there are on-going discussions between Member States to find a solution.

6. *Conventions adopted by the Eighteenth Session (1996) and by the Special Commission with a Diplomatic Character (1999)*

(a) Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

The Deputy Secretary General reminded the participants of the status of the signatures and ratifications of the Convention. He underlined that the great majority of States that signed or ratified the Convention are also parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. He indicated that the discussions relating to the 1996 Convention held during the October / November 2006 Special Commission, have highlighted the great importance of the 1996 Convention in different regions of the world, *inter alia* in respect of issues of contact, parental responsibilities or problems related to the trafficking of children.

He reported that many States were making efforts to implement the 1996 Convention and hoped that the impasse between Spain and the United Kingdom will be solved shortly to enable the ratification of the Convention by all European Union States. He highlighted the lack of resources of the Permanent Bureau to undertake the drafting of a Guide to Good Practice on the implementation of the 1996 Convention as requested by the October / November 2006 Special Commission.

A representative of the European Community (Council) indicated that the Convention is an important instrument and that there is no problem with its content. He hoped that the jurisdictional problem would soon be solved.

(b) Convention of 13 January 2000 on the International Protection of Adults

The Deputy Secretary General reminded the Council that the Convention has been signed by France, Germany and the Netherlands, and that the United Kingdom has ratified it. He

indicated that Switzerland will sign the Convention and Germany will ratify it on Tuesday 3 April 2007. He added that non-Member States, such as India, are also interested by this Convention.

Many experts informed the Council that their States are contemplating the signature or ratification of this important Convention.

7. Conventions adopted by previous Sessions

(a) Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Documents
(b) Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
(c) Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
(d) Convention of 25 October 1980 on International Access to Justice

Mr Bernasconi (First Secretary) indicated the status of the signature, ratification and accession to the Conventions on international administrative and legal co-operation. He highlighted that these Conventions have a practical relevance and that many requests are addressed to the Permanent Bureau by judges, legal practitioners and private individuals.

Many experts informed the Council that their States are contemplating the signature or ratification of these important Conventions. An expert from Brazil noted that the Ministers of Justice of the Mercosur countries have formally adopted a declaration encouraging the signature and ratification of these Conventions by their States.

Mr Bernasconi (First Secretary) mentioned that this declaration is partly due to the efforts of the Permanent Bureau in Latin America through Mr Ignacio Goicoechea (Liaison Legal Officer for Latin America).

(e) Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages

The Secretary General presented an outline of the Convention (see Annex I). He indicated that while only three States are Party to this Convention, the Convention presents a major practical interest. He invited States to take a fresh look at the Convention.

A representative of the *Commission international de l'état civil* (CIEC) stated that if the Convention counts few States Parties, this is due to the fact that it was ahead of its time. He indicated that this Convention was the inspiration for the new *Convention on the Recognition of Registered Partnerships* adopted on 22 March 2007 by the General Assembly of the CIEC.

VIII. FUTURE WORK: NEW TOPICS

Report on the feasibility study on the development of a new instrument for cross border co-operation concerning the treatment of foreign law

Mr Bernasconi (First Secretary) explained that the Special Commission on General Affairs and Policy of April 2006 invited the Permanent Bureau to prepare a feasibility study on the development of a new instrument for cross border co-operation concerning the treatment of foreign law. He indicated that in preparation of the study, a meeting of experts chaired by Mr Struycken was convened; the report of this meeting is to be found in Preliminary Document No 21 A. He highlighted that the list of the very impressive participants is annexed to this report. He thanked Ms Shaheeza Lalani, Intern at the Permanent Bureau, funded by the Ministry of Foreign Affairs of Canada and by the Ministry of International Commerce of Canada, for all the background research.

He indicated that at the meeting the experts had concluded that there would never be a comprehensive harmonisation of different approaches to the treatment of foreign law because

of the different existing practices and the broad variety of different approaches which go beyond the differences between civil law and common law. On the other hand, at the meeting the experts did acknowledge the need to facilitate access to foreign law and encouraged the Permanent Bureau to continue work in this area.

Mr Lortie (First Secretary) underlined that the objective is to elaborate an effective universal instrument which will respond to a need. He indicated that additional research needed to be taken up in order to target the limitations of existing instruments and to identify the different needs in relation to the different areas of the law.

Mr Struycken, as chair of the February meeting, highlighted that many eminent experts were interested by the meeting and that it reflected the importance of the subject matter.

The meeting closed at 1.00 p.m.

The Hague Marriage Convention

The *Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages* may be seen as implementing, for international situations, the provision of Article 23 of the United Nations International Covenant on Civil and Political Rights[3], which places the right of marriage of men and women of marriageable age in the foreground, and bases marriage on the free and full consent of the intending spouses. To that end, the Hague Convention does two things: it facilitates the **celebration** of international marriages, and it ensures the recognition of the validity of marriages across national borders. Part I of the Convention deals with celebration of marriage; Part II with the recognition of foreign marriages.

The international aspects of the celebration of marriages

Part I, on celebration, makes the law of the place of celebration, the *lex loci celebrationis*, the primary reference. This applies first of all to the **formal** requirements for the marriage: formalities, witnesses, etc (Article 2). This is hardly surprising, because this is one of the few questions of choice of law on which all systems of private international law agree. But it also applies to the **material or substantive** requirements of the marriage (Article 2). This is in accordance with the approach common law countries have generally taken, but is new to countries of the civil law tradition, which tend to apply the personal law of each future spouse to determine the substantive requirements of the marriage.

The law of the celebration approach used in the Convention is simple and has **three major advantages**: (1) local authorities can apply the requirements of their **own law** in respect of consent of the parties or age and degree of prohibited relationship (*e.g.*, uncle and niece); they may not apply the requirements of the law of the domicile, nationality or community of foreign marriage candidates; (2) it **avoids characterisation problems**, for example, the problem of determining whether a parent's consent is a matter of form or of substance, because the applicable laws will coincide; and (3) it allows **unusual or oppressive requirements** of a foreign law (*e.g.*, any requirements based on race or colour **to be ignored**. Contracting States may, if they wish, and as is the case for the Netherlands, continue to apply the substantive requirements of the foreign law if the person in question has no personal link to the forum (Article 6), but they may also go further and, as is the case for Australia, apply their own law in all cases, irrespective of whether the foreigner has a personal connection to their State.

Recognition of the validity of foreign marriages

While Part I of the Convention, on celebration, is optional and may be excluded, Part II, on the recognition of the validity of marriage, in contrast is mandatory. The question of the recognition of the validity of marriages is critical in an age of exponential growth of mobility. The basic rule of the Convention is a simple one: the State of celebration – it is important to note that this may be **any** State, not just another Contracting State – determines the validity of the marriage, and the Contracting States are bound, subject to a limited number of exceptions and subject of course to the mandates of their *ordre public*, to recognise the validity of the marriage **if valid according to the law of the State of celebration** (Article 9). This has the great advantage of avoiding the need to review the applicable law

[3] Article 23 of the International Covenant on Civil and Political Rights of 16 December 1966 reads as follows:

> "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
>
> 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
>
> 3. No marriage shall be entered into without the free and full consent of the intending spouses.
>
> 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

under the conflict conflict of laws rules of the recognising State. Special provision is made for marriages concluded by diplomats or consuls. Where a competent authority of the State where the marriage was celebrated has issued a marriage certificate, the marriage shall be presumed to be valid until the contrary is established (Article 10).

A limited number of exceptions are allowed (Article 11): a Contracting State may (not must) only refuse to recognise the validity of a marriage where at the time of the marriage under the law of the requested State, (1) one of the spouses was **already married**; or (2) the spouses were **related to one another, in the direct line or as brother and sister**; or (3) one of the spouses had **not attained the minimum age** required for marriage; or (4) if one of the spouses **lacked the capacity** to give their consent or (5) did not freely consent to the marriage. In addition, *ordre public* may be invoked by the requested State, for example, when in a concrete case the marriage certificate, or the underlying marriage itself, is a fake or is otherwise fraudulent. So, while the Convention favours the recognition of marriages, it avoids the possibility of resorting to "marriage heavens".

The rules on recognition of the validity of a marriage also apply where the recognition question arises in the context of another question, *e.g.*, in the context of a re-marriage: the validity of the previous marriage is then referred back to the law of the place of celebration.

Although the Convention has not yet been ratified by many States (currently Australia, Luxembourg and the Netherlands are States Parties), it is very modern in its approach. It has been a model for recent work by other international organisations, such as the International Commission on Civil Status. The Convention is simple, straightforward, and, in many ways ahead of its time. It deserves to be looked at more closely than has perhaps been the case thus far.

Council on General Affairs and Policy of the Conference (2-4 April 2007)

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REPORT OF MEETING No 2

Distribution: by e-mail

MEETING OF MONDAY 2 APRIL 2007 – AFTERNOON SESSION

The meeting opened at 2.50 p.m. under the Chairmanship of Mr Antti Leinonen (Finland).

The Chair suggested that experts continue the discussion from the morning session in relation to the development of a new instrument for cross-border co-operation concerning the treatment of foreign law.

Many experts recognised the usefulness of the meeting of experts on this topic, held in February 2007, and commended the Permanent Bureau for its selection of invited experts and on its complete report. According to one expert, the treatment of foreign law appeared to be the most promising of the three proposed feasibility studies.

A few experts remarked that the treatment of foreign law is a real problem with practical consequences in litigation and involves judges essentially, but also other legal professionals. An expert underlined that this issue not only arises in litigation contexts, but also outside the courtroom, for example in notarial practice – which should be taken into account in the course of future work.

In the light of existing instruments in this area, for example, the *European Convention of 7 June 1968 on Information on Foreign Law* (the "London Convention"), a few experts recommended that deficiencies of current instruments be examined in order to remedy these deficiencies in a new, more effective instrument.

Many experts expressed the view that the Permanent Bureau should continue its work in this area.

Mr Lortie (First Secretary) thanked the Chair and the experts for their comments and pointed out that recommendations as to how to remedy deficiencies of current instruments were discussed in the succinct analysis document considered at the meeting of experts and included in Preliminary Document No 21 A. These recommendations were from two reports, one by Barry Rodger and Juliette Van Doorn and the other by Eberhard Desch.

Mr Bernasconi (First Secretary) identified and explained the main deficiencies relating to existing instruments on the treatment of foreign law and addressed in these reports, in particular time delays and the specificity (or rather lack thereof) of questions posed.

A representative of the European Community (Commission) indicated that the Community is not hostile to the topic in question. It had considered this subject without going into depth and had not yet taken a decision in this regard.

The Secretary General observed that the London Convention does not allow for direct communication between the requesting judge and the agency appointed to respond to requests for information on foreign law. He remarked that if the Permanent Bureau were to elaborate a Convention in this area, it would not "take off" for another ten years. Therefore, it will be necessary to elaborate a global and flexible mechanism, taking into account further needs. He expected that the need for access to information on foreign law was bound to increase, and referred to the Choice of Court Convention and EU Regulations on applicable law currently under preparation, among others.

In response to a question raised by one of the experts regarding the possibility of a second meeting of experts, Mr Bernasconi (First Secretary) reminded experts that the first meeting of experts was a general exploration of the feasibility of a cross-border instrument in this area and that a second meeting could only be useful if the work of the Permanent Bureau led to a new text for consideration by experts.

Regarding the time frame for the feasibility study, Mr Bernasconi added that work in this area would continue in 2007 on the basis of answers to a questionnaire that will be sent out in the course of the summer period.

The Chair concluded that there is a consensus regarding this topic and broad support from experts in favour of continuing work in this area. He then invited Ms Schulz (First Secretary) and Mr Lortie (First Secretary) to present the feasibility study on the choice of law in international contracts.

Report on the feasibility study on the choice of law in international contracts

Ms Schulz (First Secretary) presented Preliminary Document No 22, recognising Thalia Kruger and Ivana Radic for their work. She drew experts' attention the Annex to Preliminary Document No 22 B, which lists all of the instruments considered in relation to this feasibility study. She first introduced Preliminary Document No 22 B, which takes into account law as applied by courts, and then introduced Preliminary Document No 22 C, which has a special focus on international arbitration. In introducing Preliminary Document No 22 A, Ms Schulz discussed a Questionnaire sent to Member States' legislative bodies, the International Chamber of Commerce in Paris, and arbitral institutions. She noted the low number of responses to the Questionnaire (only one-third of the Member States provided responses to the Questionnaire, and the International Chamber of Commerce had received 26 responses from the business world) and questioned whether this was a sufficient basis to decide whether to move forward in this feasibility study. She asked whether the low response rate was due to the fact that little time was allowed for responding to the Questionnaire or whether the topic was of no interest. She pointed out that from the responses received, there did not appear to be a preference for a binding instrument over non-binding instruments. With respect to Preliminary Document No 22 B, she discussed limitations to party autonomy, including public policy and mandatory rules.

Mr Lortie (First Secretary) underlined that choice of applicable law has also been examined in the context of international arbitration. He referred to Preliminary Document No 22 C prepared by Ivana Radic and thanked her for her work in this regard. He reminded experts that the study is devoted to questions of substantive law rather than procedural law. Mr Lortie noted that there are situations in which parties to arbitration have not designated the applicable law and he pointed to the established practice used by arbitrators to designate the applicable law in these cases. He observed that the statistics gathered through the Questionnaire confirmed that the number of such cases remains low. Mr Lortie indicated that the principle of party autonomy with respect to the applicable law is well established in the field of arbitration and reminded experts that the most affecting feature of international arbitration is the flexibility of this method of dispute settlement. Mr Lortie remarked that the study examined other questions such as the formal validity, as well as the material validity of the arbitration agreement.

Mr Lortie indicated that the Permanent Bureau received only a few responses from arbitration centres and users of arbitration mechanisms in response to Part 3 of the Questionnaire. He concluded that there was either a lack of interest or too short a deadline for responses to the Questionnaire. He also noted that since a meeting of the International Chamber of Commerce in 1980, where stakeholders and parties were invited to elaborate more rules in this area, nothing has been done in this area, which might reflect a desire to maintain the current flexibility in this area. Mr Lortie provided a few statistics from which it was possible to conclude that the idea of non-binding rules was more appealing.

Mr Lortie suggested extending the deadline for the Questionnaire; he indicated that more responses from Member States would permit the Permanent Bureau to reach further conclusions. He pointed to issues for discussion relating to a possible future instrument in this area, including the scope of such an instrument – whether it would only apply to contracts or only to business contracts or also to contracts with consumers or employees. Mr Lortie recommended the promotion of the rule on party autonomy universally so that certain developing States, unfamiliar with this principle, would have the possibility of using it. Mr Lortie also noted the need to clearly delineate limitations to the rule of party autonomy by imposing clear limitations for reasons of predictability.

Mr Lortie enumerated the type of future action that could be contemplated in this area. He remarked that, though difficult to elaborate, there could be a new convention in this area. There could also be a set of non-binding legal principles, a model law, or a guide to good practice. He indicated that if this project was to be pursued that UNCITRAL should be invited to co-operate with the Permanent Bureau in this regard. With respect to a binding instrument, Mr Lortie indicated that this could provide rules for States that cannot become Parties to existing instruments. As for non-binding rules, such as those elaborated by Unidroit, these could serve as the source of legislation; a tool for interpretation, which arbitral tribunals tend to use more readily; or a tool for non-Member States.

The Chair thanked Ms Schulz and Mr Lortie for their presentations on the feasibility study on the choice of law in international contracts and opened the floor to comments from experts.

A representative of the European Community (Council) highlighted the work that the European Community is currently doing in relation to the *Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations*. He indicated that discussions are under way in Brussels to modify this Convention. He underlined that the Rome Convention and the future regulations will have a universal character.

The Chair thanked the representative of the European Community. Given the small number of interventions, the Chair proposed that discussions on this topic resume at a later point in order to allow participants time to familiarise themselves with the Preliminary Documents.

Report on the feasibility study on cross-border mediation in family matters

The Chair then turned to the feasibility study on cross-border mediation in family matters and invited the Deputy Secretary General to present this topic.

The Deputy Secretary General explained the mandate given to Permanent Bureau to produce a feasibility study on cross-border mediation in family matters. He indicated that when the mandate was given, the Permanent Bureau, and in particular, former Legal Officer, Mrs Sarah Vigers, was already preparing a more limited study on mediation, conciliation and similar solutions in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the "1980 Convention"). He explained that this study was discussed at the Fifth meeting of the Special Commission to review the operation of the 1980 Convention and that a large number of experts on international mediation attended the Special Commission. He stated that the conclusions of the Special Commission underlined the importance of mediation, as well as other efforts to promote agreement. He referred experts to Preliminary Document No 20, paragraph 5.2, for a list of the advantages of mediation.

The Deputy Secretary General mentioned initiatives by non-governmental and inter-governmental organisations and raised the important role of Central Authorities under the 1980 Convention in promoting voluntary solutions. He outlined the important role of lawyers in encouraging amicable settlements, indicating that much more could still be done in this regard.

The Deputy Secretary General introduced Preliminary Document No 20 in more detail, thanking Mrs Vigers for her assistance in preparing the document. He explained that Preliminary Document No 20 provides a rough overview of national developments in mediation in family matters and alluded to the existing differences in different countries. He enumerated several important questions raised with respect to mediation in the family law context: whether communications made during the course of mediation are privileged; whether a mediator can be required to testify in court; how mediation agreements are formalised; and, whether there are standard practices in relation to costs. He pointed out that methods of appointing mediators differ and that standards differ from State to State, particularly since systems of accreditation also differ.

The Deputy Secretary General described the proposed models in Preliminary Document No 20 and noted the practical issues raised by these models, as well as the conclusion that no model was clearly better than another. He explained that Preliminary Document No 20 gives special consideration to the role of private international law and the Hague Conference on Private International Law, particularly in regard to the question of the law applicable to certain aspects of agreements; matters of child custody, contact, maintenance, and distribution of family assets; the enforcement of agreements in different jurisdictions; the jurisdiction of courts or other authorities to review or formalise agreements reached by mediation; and the extent to which existing conventions are responsive to these questions.

The Deputy Secretary General emphasised that issues surrounding the recognition of private agreements relating to maintenance are being examined closely within the context of the current negotiations on the new maintenance Convention. Additionally, he raised issues of accreditation, codes of conduct and confidentiality. He indicated that more work, consultation and information exchange is needed as to who possible mediators might be; whether Central Authorities could play a role in this regard; what procedures are currently available for the recognition and enforcement of mediated agreements; and whether work on a new instrument in this area could be justified. He concluded that the Permanent Bureau is at an early stage in assessing the added value that the Hague Conference can bring to this promising area.

The Chair thanked the Deputy Secretary General for his presentation and invited comments from the floor.

A few representatives of the European Community (Council and Commission) remarked that a proposal of the European Commission on mediation in family matters is already being discussed.

A representative of the European Community (Commission) underlined that a future instrument would not have a universal character and, therefore, would not compete with a possible instrument prepared by the Hague Conference. Rather, there would be room for a parallel instrument in this area.

A representative of the European Community (Commission) noted the difficulty of reaching a consensus on this issue, and in particular, on the issue of accreditation of mediators.

An expert from Switzerland thanked the Permanent Bureau, and in particular, the Deputy Secretary General for the complete and varied study. She remarked that the mediator should not rest with the Central Authority, as these bodies can be seen by the abducting parent, in the context of the 1980 Convention, as partial to the left-behind parent. She indicated that the possible directions enumerated at paragraph 5.11 of Preliminary Document No 20 were insufficient and should be more open and comprehensive.

She also proposed a protocol to the 1980 Convention to address mediation and encouraged the Permanent Bureau to continue its work on transfrontier mediation.

The Chair thanked the expert from Switzerland for raising these concrete ideas.

The meeting closed at 5.00 p.m.

Council on
General Affairs and
Policy of the Conference
(2-4 April 2007)

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HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 3

Distribution: by e-mail

MEETING OF TUESDAY 3 APRIL 2007 – MORNING SESSION

The meeting opened at 9.45 a.m. under the Chairmanship of Her Excellency Mrs Xue Hanqin, Ambassador of the People's Republic of China to the Netherlands.

II. ADMISSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE

3. Decision taken in conformity with Article 3 of the amended Statute

The Secretary General stated that 41 Member States were present in the room and confirmed that the quorum required by Article 3(1) of the Statute for admission of a new Member has been reached.

The Chair recalled the steps taken for the admission of the European Community to the Hague Conference and highlighted that the Statute of the Conference had to be amended. She indicated that the new Statute entered into force on 1 January 2007 and informed the participants that the European Community transmitted on 23 February 2007 a letter to the Permanent Bureau containing the Declaration of competence and a letter expressing its wish to become a Member of the Hague Conference. She informed the participants that the time for the decision on the admission of the European Community as Member had come.

The Secretary General drew the attention of the experts to the Information Documents, "Amendments to the Statute of the Hague Conference on Private International Law – Addendum to the Procès-verbal of 30 September 2006" and "Copy of the Letter of 23 February 2007 circulating the *Declaration of the competence of the European Community specifying the matters in respect of which competence has been transferred to it by its Member States*", Working Document No 1 submitted by Argentina and the Programme of the Ceremony for the admission of the European Community as a Member of the Hague Conference.

The Chair invited the experts to take the floor.

An expert from Argentina expressed Argentina's satisfaction concerning the admission of the European Community to the Hague Conference. He looked forward to working together with the European Community in the fulfilment of common objectives. He added that many links tie Argentina and European countries. However, he indicated that Argentina submitted Working Document No 1 containing its Embassy's Note OI No 018/07 of 15 March 2007, by which Argentina formally reserves its position regarding the pretended inclusion of parts of the Argentine national territory (in the South Atlantic and Antarctica) in the European treaty annexes listing non-autonomous and / or overseas territories. He underlined that Argentina requests that the Hague Conference duly register its position and the aforementioned Note.

An expert from the United Kingdom firmly rejected the Statement made by Argentina and indicated that there would be no negotiation on the South Atlantic and Antarctic overseas territories of the United Kingdom unless the inhabitants of such territories desire such discussions. She indicated that a note confirming this position would be circulated and asked that her declaration be noted in the minutes. The Secretary General confirmed that the positions of Argentina and the United Kingdom would be noted in the minutes.

The Chair reminded the participants that the Statute of the Hague Conference and its Rules of Procedure operated on a consensus basis. Noting that no Member States present objected to the admission of the European Community to the Hague Conference, the Chair declared that the admission of the European Community as a Member of the Hague Conference had been accepted unanimously.

An expert of Turkey complimented the European Community on its admission to the Conference.

A representative of the European Community (Parliament) was delighted to see that the admission of the European Community to the Hague Conference had been accepted and underlined the historic importance of this decision. She insisted on the importance of the work of the Conference and suggested the creation of a parliamentary forum in the Conference.

Mr Struycken (President of the Netherlands Standing Government Committee on Private International Law) thanked the Chair for her leading role in the preparatory work which led to the smooth admission of the European Community to the Hague Conference and added that this was in fact a historic moment for the Hague Conference and the European Community.

The Chair thanked the Council and indicated that the admission of the European Community to the Hague Conference will strengthen the role of the Hague Conference in the area of private international law.

VI. PROMOTION, MONITORING, ASSISTANCE AND SUPPORT OF CONVENTIONS: CONVENTIONS ON INTERNATIONAL PROTECTION OF CHILDREN, VULNERABLE ADULTS, INTERNATIONAL FAMILY AND FAMILY PROPERTY RELATIONS

10. Report on the activities in relation to the Conventions of 1980, 1993 and 1996 and, in particular:

a) Special Commission of October / November 2006 to review the operation of the International Child Abduction Convention and the implementation of the 1996 Convention, including progress in relation to Guides to Good Practice

The meeting continued at 10.15 a.m. under the Chairmanship of Mr Antti Leinonen (Finland).

The Deputy Secretary General described the discussions of the Fifth meeting of the Special Commission held in October / November 2006 to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*. He indicated that there were 73 States present represented by 260 participants including a large number of judges. He added that there were many Preliminary Documents prepared by the Permanent Bureau for this Special Commission. He drew attention to the report of the Fifth meeting of the Special Commission presented in Preliminary Document No 19 of March 2007, which will be circulated to the participants of the October / November 2006 Special Commission once it is finalised. He highlighted that even though the Special Commission mandated the Permanent Bureau to work on additional projects, the lack of resources prevented the Permanent Bureau from starting many of these projects. He expressed gratitude for all the support given by the State Parties to the Permanent Bureau for many of the on-going projects.

Ms Schulz (First Secretary) added that the draft Guide to Good Practice on Enforcement of Return and Contact Orders would be circulated to a group of experts in the near future, probably late spring or early summer 2007.

An expert from Canada clarified that Canada would not be in a position to provide additional financial resources for the Country Profiles project.

An expert from Mexico encouraged States to accept the accession of States in order to promote further the protection of children.

An expert from Peru expressed his recognition to the United States of America for having accepted the accession of Peru to the 1980 Convention on 30 March 2007. He particularly thanked the Member States for financially supporting the participation of several States that would have otherwise not have been able to attend the October / November 2006 Special Commission.

An expert from Switzerland reiterated its request to add an additional Protocol to the 1980 Hague Convention in order to render the Convention more effective. She insisted on the fact that it is the responsibility of this Council to make a decision regarding the additional Protocol and to eventually give the mandate to the Permanent Bureau to prepare this next step.

The Deputy Secretary General and the Chair invited Switzerland to present a written proposal to the Council.

The Chair added that the delegations were not ready to discuss this particular point and suggested that this could be discussed during the Diplomatic Session in November 2007 or at the next meeting of the Council.

The meeting closed at 11.20 a.m.

CEREMONY FOR THE ADMISSION OF THE EUROPEAN COMMUNITY AS MEMBER OF THE HAGUE CONFERENCE

The ceremony opened at 12.10 p.m. under the Chairmanship of Her Excellency Mrs Xue Hanqin, Ambassador of the People's Republic of China to the Netherlands.

The Chair welcomed Mrs Brigitte Zypries, Minister of Justice of Germany representing the Presidency of the Council of the European Union, the representative of the Vice-President of the European Commission, Mrs Diane Schmitt, the Vice-President of the European Parliament, Mrs Diana Wallis, and the representatives of the Host State, the Minister of Justice, Mr Ernst Hirsch Ballin and the Minister for European Affairs, Mr Frans Timmermans.

She recalled that the Council had accepted the admission of the European Community to the Hague Conference during the morning session.

The Minister for European Affairs, Mr Timmermans, invited Mrs Zypries, representing the Presidency of the Council of the European Union, to deposit the instrument of acceptance of the Statute of the Hague Conference.

Mrs Zypries, representing the Presidency of the Council of the European Union, deposited the instrument of acceptance of the Statute of the Hague Conference and signed the procès-verbal. She expressed her gratitude to the Member States. She added that the European Community will be an active Member of the Hague Conference and will do all in its power to co-ordinate European instruments and Hague Conventions.

The Secretary General welcomed the European Community as a new Member of the Hague Conference and an invaluable ally in its efforts to help insure justice and legal security for human relations and commercial transactions across borders. He pointed out that the European Community was already very familiar with the workings of the Hague Conference because it had been an Observer since its creation and had actively taken part in negotiations since the entry into force of the Treaty of Amsterdam. He added that the acceptance of the Statute was a manifestation of the desire by the European Community to exercise its legislative jurisdiction in private international law matters and reflected its awareness of the wealth of work built up by the Hague Conference in the field of private international law over the past 115 years. He noted that it also represented the expression of the wish to participate in a systemic manner in the creation of the new instruments for co-ordination, communication and co-operation in this field. He presented the full Collection of the *Actes et documents*, the Proceedings of each of the Diplomatic Sessions of the Conference since 1893 to the representative of the Presidency of the Council of the European Union.

The Chair formally declared the European Community a Member of the Hague Conference. She informed the Council that Germany is taking the opportunity to deposit the instrument of ratification of the *Hague Convention of 13 January 2000 on the International Protection of Adults*; that Switzerland is signing the *Hague Convention of 13 January 2000 on the International Protection of Adults* and the *Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*; and that Ukraine is depositing the instrument of accession to the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.*

Experts from Germany and Switzerland highlighted the usefulness of the 2000 Hague Convention and encouraged other States to sign and ratify the Convention. Switzerland announced that it would soon ratify the Trust Convention [ratification that took place on 26 April 2007 (note by the Permanent Bureau)]; an expert from Ukraine highlighted the importance of the accession to the Conventions of 1993 and 1996 for this country.

The Chair congratulated the European Community as well as Germany, Switzerland and Ukraine that have signed, ratified or acceded to Hague Conventions during the Ceremony.

The ceremony ended at 12.45 p.m.

Council on General Affairs and Policy of the Conference (2-4 April 2007)

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CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 4

Distribution: by e-mail

MEETING OF TUESDAY 3 APRIL 2007 – AFTERNOON SESSION

The meeting opened at 3.05 p.m. under the Chairmanship of Mr Antti Leinonen (Finland).

The Chair turned the floor over to Ms Jennifer Degeling (Principal Legal Officer) to present the practical operation of the 1993 Convention.

b) Progress with the implementation assistance programme for the 1993 Convention and follow-up on the Special Commission of 2005 on the operation of the 1993 Convention

Ms Degeling (Principal Legal Officer) reminded experts of the Special Commission held in September 2005 to review the operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* and that the report from this Special Commission was published in August 2006. She noted that during the course of this Special Commission, there was a proposal to revise the draft Guide to Good Practice. She announced that the revision of the draft Guide to Good Practice is almost completed and expected that an English version would be completed at the end of April with the final French and Spanish versions to follow.

Ms Degeling announced that concerning a Guide to Good Practice in respect of accreditation, preliminary research regarding model core criteria for accreditation of adoption bodies have been made thanks to the assistance of Ms Barbara Liegel, Intern with the Permanent Bureau.

She noted the Conclusions of the Special Commission, in particular the recommendation to collect and disseminate information on different countries in order to facilitate access to information, and the role of the Permanent Bureau in this regard. Moreover, she indicated that draft country profile form – examined at a meeting of European Central Authorities in Basel in October 2006 – are currently available on the website of the Hague Conference. She mentioned that two States Parties, Lithuania and Denmark, had already completed the forms and that preparing draft model forms, establishing further guides to good practice and improving statistics still had to be done.

Ms Degeling introduced the Intercountry Adoption Implementation Assistance Programme. The initial phases of the Programme had been generously funded by the Government of the Netherlands. Assistance in implementing the Convention had been offered to two countries: Guatemala and Kenya. In particular, she indicated that the Guatemalan Government is making special efforts to implement the Adoption Convention.

An expert inquired as to the situation of Cambodia and asked whether there was any news regarding Guatemala's ratification of the Convention. Ms Degeling responded that Cambodia has not yet indicated a desire to join the Adoption Convention [Note by the Permanent Bureau:

in the meantime, Cambodia did accede to the Convention, on 6 April 2207[4]] and invited Mr Goicoechea (Liaison Legal Officer for Latin America) to respond to the question regarding Guatemala.

Mr Goicoechea (Liaison Legal Officer for Latin America) gave an overview of the situation in Guatemala.

The Secretary General remarked that many countries in Africa and Asia, would like to benefit from the intercountry adoption implementation assistance programme. It is, therefore, necessary to contemplate methods of responding to these numerous requests.

c) INCADAT, INCASTAT and iChild

- *iChild*

Mr Lortie (First Secretary) reminded experts that the INCADAT, INCASTAT and iChild systems are tools using information technology to support the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the "1980 Convention"). He reminded experts that these three systems are funded in large part by the Supplementary Budget.

Mr Lortie highlighted the fact that the iChild project, presented at the Special Commission of October / November 2006, is currently being used successfully by 7 Central Authorities representing almost every continent and that more than 30 Central Authorities are interested in the implementation of this project.

Mr Lortie reminded experts that the software is graciously offered by WorldReach Canada.

- *INCASTAT*

Mr Lortie reminded experts that the INCASTAT system permits Central Authorities to manage statistics relating to the 1980 Convention. He reiterated the need for Central Authorities to furnish a general e-mail address in order to ensure permanent contact.

- *INCADAT*

Ms Ely (Senior Legal Officer) reminded experts that INCADAT was one of the first initiatives in the context of post-Convention services that was launched at the Special Commission on General Affairs and Policy in May 2000. INCADAT compiles judicial decisions from around the world that are considered the most important in relation to abduction matters. She pointed out that there are approximately 30 INCADAT correspondents responsible for collecting decisions and summarising them. INCADAT most recently includes a section relating to non-Hague Convention related child abductions. She underlined that since 2004, the project is no longer subsidised by the Supplementary Budget, but rather by the Regular Budget; funds from the Supplementary Budget currently allow for the completion of the Spanish version of INCADAT.

11. Report on regional expansion and development, including Report by the Liaison Legal Officer for Latin America

Mr Goicoechea (Liaison Legal Officer for Latin America) presented the most recent developments in the region within the context of the Hague Children's Conventions.

The 1993 Convention

Mr Goicoechea mentioned the interest that many States of the region have in the Convention: the Permanent Bureau has offered implementation assistance to Guatemala; Uruguay recently designated a Central Authority under the Convention; and the Dominican Republic recently joined the Convention.

[4] The Convention will enter into force on 1 August 2007; the Central Authority has not yet been designated.

With respect to Guatemala, in particular, Mr Goicoechea indicated that the Convention is applicable at an international level but has no effect internally as a result of a Constitutional Court decision of 2003. He informed experts that since 2005, much was done to overcome this situation, including the essential withdrawal of reservations to Articles 11 and 12 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*. Congress, conscious of the urgency of the Convention's approval, is waiting for a request from the President in this regard, which should be imminent, in order to approve the Convention.

Implementation of the Convention in Guatemala

Mr Goicoechea indicated that his meetings with key actors concerned with adoption matters (law makers, non-governmental organisations, and adoption agencies) have been enriching. The information obtained through these exchanges has yet to be analysed by international experts in order to work on an assistance implementation plan. Mr Goicoechea specified that all actors demonstrated a willingness to support the project.

The 1980 Convention

Mr Goicoechea specified that the Fifth meeting of the Special Commission to review the operation of the 1980 Hague Convention had been the major event for Latin America on 2006. He reminded experts that the Permanent Bureau had assisted Latin American countries with their preparations of Latin American States for the Special Commission. He indicated that there was an active participation of Latin American delegates at the Special Commission. He also noted the high rate of participation from Latin American States, which was explained to a certain extent because of financial support received from the Supplementary Budget.

He drew experts' attention to the Inter-American Meeting of experts of 10 November 2006, the first joint seminar organised by the Hague Conference and the Inter-American Children's Institute, which had as its objective to work on implementation of Conclusions and Recommendations agreed at the Fifth meeting of the Special Commission to review the operation of the 1980 Convention.

Network of Liaison Judges

Mr Goicoechea remarked that the network of liaison judges is extending in a remarkable way with liaison judges already nominated in several countries in Latin America.

The 1996 Convention

Mr Goicoechea indicated that the Convention had been presented the Mercosur Human Rights Authorities as well as at the VII Ibero-American Conference of Ministers and High Responsible Officers for Infancy and Adolescence. It was also stressed the clear interest shown in the region for the new Convention on the International Recovery of Child Support and other Forms of Family Maintenance.

Many experts from the Latin American region thanked Mr Goicoechea for the quality of his work for the Latin American countries. They expressed the view that they looked forward to successful results in the time coming and were willing to contribute to this work in the future.

An expert from Argentina made the observation that the Hague Children's Conventions are important, though insufficiently known in the region.

V. PROMOTION, MONITORING, ASSISTANCE AND SUPPORT OF CONVENTIONS: CONVENTIONS IN THE AREAS OF COMMERCIAL AND FINANCE LAW, AND ON LEGAL CO-OPERATION AND LITIGATION

8. *Report on the activities on the Conventions on legal co-operation and, in particular,* Apostille, *Service Abroad and the Taking of Evidence*

a) Progress report on the e-Apostille Pilot Programme

The Chair invited Mr Bernasconi (First Secretary) to discuss developments in the electronic Apostille Pilot programme (the "e-APP") since the General Affairs Commission of April 2006.

Mr Bernasconi (First Secretary) introduced Mr Reiniger, Executive Director of the National Notary Association (NNA). Mr Bernasconi recalled that the e-APP was a joint initiative of the HCCH and the NNA. Mr Bernasconi thanked the NNA for the tremendous and most helpful assistance provided in the preparation, management and development of the e-APP.

Mr Bernasconi reminded experts of the characteristics and the objectives of the e-APP, referring to Preliminary Document No 18. Under the e-APP, the HCCH and the NNA are, together with any interested State (or any of its internal jurisdictions), developing, promoting and assisting in the implementation of low-cost, operational and secure software for (i) the issuance and use of electronic Apostilles (e-Apostilles), and (ii) the creation and operation of electronic Registers of Apostilles (e-Registers). He underlined that implementing this software is a suggestion only – the e-APP does not impose any specific software or technology. Competent Authorities can develop or use comparable open source or proprietary software to accomplish the same goals. Mr Bernasconi specified that under the e-APP, it is suggested that Competent Authorities use readily available and already widely used PDF technology and digital certificates to issue e-Apostilles. He stressed that considering the current methods of attaching paper Apostilles (*e.g.*, by using staples or other insecure forms of attachment), the use of PDF e-Apostilles in combination with digital certificates offers dramatically increased security and effective fraud-fighting tools to Competent Authorities and all users of Apostilles. Under the e-APP, Competent Authorities who contemplate issuing e-Apostilles are encouraged to contact receiving jurisdictions to inquire whether these jurisdictions will accept the envisaged e-Apostilles. Mr Bernasconi also recalled that under the e-APP, the HCCH and the NNA have developed free and open-source software for the creation and operation of e-Registers by Competent Authorities, and explanatory material as to how third parties can use such e-Registers. An e-Register under the e-APP allows for easy online queries by third parties to verify the origin of an Apostille without Competent Authorities having to answer these queries individually by phone, email or otherwise. E-Registers should encourage greater use of the Register as a public convenience and a deterrent to forgery and fraud. Mr Bernasconi emphasised that the programme could lead to co-operation with any interested State or any internal authority that wishes to participate in the programme and reminded delegates that the programme was free. He remarked that three jurisdictions are already participating in the e-APP. He stated Kansas was first to issue electronic Apostilles, Colombia was first to accept e-Apostilles and the state of Rhode Island was the first to go online with an e-Register as suggested under the e-APP. Mr Bernaconi announced that the objectives set for the first year of the pilot programme had thus been reached.

He thanked the Government of the United States of America for its financial contributions toward the Supplementary Budget, which permitted an upcoming mailing about the e-APP to all Competent Authorities designated under the Apostille Convention and improvement of the programme's visibility.

Mr Reiniger (NNA) indicated that the NNA is pleased to participate in the e-APP and is pleased to provide regular administrative and technical assistance. He announced the holding of the third International Forum on digital evidence from 30 May until 2 June 2007. This Forum will also have a Session dedicated to the e-APP. He noted that the experts seising on this work hope that this forum will provide an opportunity to create an international standard for the authentication of electronic documents. He told experts of an exciting development involving the state of Virginia's codification of Standards that take into account the work conducted by the HCCH.

An expert from Italy indicated that his country is in favour of the adoption of an electronic Apostille system and specified that it had already opted for resorting to electronic compulsory dematerialisation linked to real estate transactions for a number of years. Nevertheless, he criticised the e-APP on a number of points.

First, he stated that the programme uses a technology developed by a private US company. However, it is possible and even probable that other technology in the public domain with an equivalent level of viability can be used. He expressed concern that these different systems might not be mutually compatible, and in that sense, affect the universality of the traditional Apostille. He raised, in this regard, the solution implemented by European notaries, confronted with a similar problem, who created a platform using a simple browser to verify signatures in any format and to read signed documents. He indicated that it was necessary to find a solution to this question of compatibility of different formats.

He added that the e-APP uses certificates issued by private certifiers that are then introduced into the sphere of public authorities. There is a transition from a regime, where safety is based on relations between sovereign institutions, to a private regime where the threshold of responsibility is often insufficient. He remarked that administrations have been confronted with this problem for many years and have opted for certificates issued by public institutions.

To conclude, he questioned the authenticity of a printed version of an e-Apostille. He underlined that a printed e-Apostille should only be used after resorting to a public official who can assert that the printed version is in conformity with the original version. He noted that the use of bar codes runs counter to the traditional universal nature of the Apostille, as it requires the use of tools and specific technologies that do not adapt easily to documents that have to be recognised universally.

Several experts underlined the importance of the e-APP. An expert indicated that her country wanted to join the programme but was lacking the financial means to do so.

An expert from the United States of America thanked Mr Bernasconi (First Secretary) and Mr Reiniger (NNA) for their thorough report and announced that his country continues to be supportive of the e-APP project. He indicated that the Federal Government is implementing programmes to authenticate electronic documents and alluded to the positive experience of Kansas.

The Chair gave the floor to Mr Bernasconi (First Secretary) to respond to comments made.

Mr Bernasconi (First Secretary) thanked, in particular, the expert from Italy for his useful observations. He noted that the programme has to be evaluated in its current context. He recognised that the programme was not without its limitations, but that it dramatically improved the security related to the current use of paper Apostilles. He also remarked that the two parts of the programme are independent from each other and can be implemented separately. Mr Bernasconi added that in most cases, the authority issuing the Apostille is familiar with the authority receiving the Apostille and can inform itself of the compatibility of its system with that of the receiving authority. He also noted that the use of the electronic register facilitates online access so that the origin of the Apostille can be verified more easily. Mr Bernasconi insisted that use of the software described and developed under the e-APP was a suggestion only. In terms of the concerns expressed regarding the certificate issued by private certifiers, he reminded delegates that the programme invited States to use high standards when selecting a certifier.

Mr Reiniger (NNA) stated that he would raise the expressed concerns at the 3rd International Forum on e-Notarisation and e-Apostilles.

b) Practical Handbook on the Service Convention: publication in other languages than English and French

Mr Bernasconi (First Secretary) introduced the 3rd edition of the *Practical Handbook on the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the "Service Convention"), indicating that the handbook had been well received by practitioners and Competent Authorities under the Convention. He mentioned the seminar held at Saint Petersburg in January 2007, which was

organised by the Permanent Bureau and the Canadian and Finnish Governments on the implementation of the Service Convention in Russia, and he noted the progress made by the Russian Government in operating the Service Convention. He indicated that a Russian translation of the Handbook was presented during the Seminar that translations in other languages are under way. He commented that requests for information on the Service Convention continue to increase and thanked Ms Mayela Celis (Legal Officer) for her work in this regard. He indicated that the preparation of a Handbook on the Apostille Convention and the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* is under way.

An expert from Spain indicated that there had been problems completing the Spanish translation of the Handbook and that a translation of the Handbook in that language would be very useful.

Mr Bernasconi (First Secretary) drew experts' attention to a draft Recommendation issued by ACSDA (America's Central Securities Depositories Association) in favour of the *Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary* (the "Securities Convention").

The Chair turned the floor over to Mr Goicoechea (Liaison Legal Officer for Latin America) to present his report on regional development in Latin America.

9. Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America

Mr Goicoechea (Liaison Legal Officer for Latin America) indicated that there is great interest in the region of Latin America for the Legal Co-operation Convention as well as for the Securities Convention. He noted that Colombia has approved, internally, the Service Convention.

The Chair thanked Mr Goicoechea and invited Ms Ely (Senior Legal Officer) and Ms Degeling (Principal Legal Officer) to offer remarks in relation to seminars and (judicial) training activities in relation to the promotion, monitoring, assistance and support of Conventions on International Protection of Children, Vulnerable Adults, International Family and Family Property Relations.

VII. PROMOTION, EDUCATION AND TRAINING – ESTABLISHING A SYSTEMATIC HAGUE CONFERENCE INTERNATIONAL TRAINING PROGRAMME; A HAGUE CONFERENCE INTERNATIONAL CENTRE FOR JUDICIAL STUDIES AND TECHNICAL ASSISTANCE

Ms Ely (Senior Legal Officer) referred experts to Preliminary Document No 14 and indicated that the Permanent Bureau has begun research into child protection in Southern and Eastern Africa. She stated that legal and administrative co-operation was required in relation to several problems in that region. She commented on the recent meeting of judges organised by the Hague Conference from 18 African countries where consideration was given to the practical implementation of principles set out in the *UN Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child* through the Hague Child Protection Conventions. She noted that conclusions of the meeting focused on establishing systems of co-operation between authorities and that the Permanent Bureau is now working toward holding a broad regional conference in Africa to develop a set of proposals on how the Hague Conventions may best be implemented in that region, taking into account issues of capacity and access to legal services.

Ms Degeling (Principal Legal Officer) told experts about the upcoming Asia-Pacific regional meeting in Sydney, 27-29 June 2007, focused on increasing the interest in and awareness of Hague Conventions by countries in the Asia pacific region as well as the improvement of the operation of the Hague Conventions between Australia and States in the Asia Pacific region. The meeting is being funded by the Australian Government with a contribution by New Zealand, and is jointly organised by the Government of Australia and the Permanent Bureau.

An expert from Australia commented that her Government is pleased to have the opportunity to work with the Hague Conference on the upcoming regional meeting. She expressed the

hope that the meeting, to which representatives from 25 countries are invited, would encourage greater understanding of the Hague Conventions and ultimately adherence.

An expert from New Zealand welcomed the initiative in the Asia Pacific region and indicated that New Zealand was providing funding for the participation of six countries at the meeting.

An expert from the Netherlands asked whether Viet Nam was likely to participate at the meeting in Sydney and whether Viet Nam was likely to ratify the 1993 Hague Convention. She indicated that the Dutch Government is considering entering into a bilateral agreement with Viet Nam in relation to adoption matters, but would regret doing so if it Viet Nam is considering ratification of the 1993 Hague Convention.

Ms Degeling (Principal Legal Officer) responded that although Viet Nam has been invited to the meeting, no response to the invitation has been received. She also indicated that the Permanent Bureau would inquire at the meeting as to the status of Viet Nam in terms of ratifying the 1993 Hague Convention.

The Deputy Secretary General added that two years ago, during a visit to Viet Nam, the Vietnamese authorities had promised the quick entry into force of the Convention but he was not aware of any further developments.

The Deputy Secretary General referred experts to Preliminary Document No 14, as well as to the reports of last year on the Malta Process held in March 2004 and March 2006. He told experts that the Permanent Bureau is discussing a possible judicial conference to be held in March 2008 in Cairo. The conference could bring together additional countries not so far involved in the Malta Process and, at the wish of Egypt, a larger range of countries in the Arab world. The Deputy Secretary General also alluded to two possible conferences: one in collaboration with the European Union relating to direct judicial communications, and another in collaboration with the International Center for Missing and Exploited Children (located in Washington, D.C., USA) on the theme of relocation.

An expert of the European Community (Commission) confirmed the likelihood of a conference, organised by the Permanent Bureau and the European Commission and indicated a hope that it would take place before the summer of 2008. He hoped that the upcoming conference would involve many European and non-European judges.

The Chair invited Ms Ely (Senior Legal Officer) to present further remarks in relation to promotion, education and training and the establishment of a systematic Hague Conference international training programme, as well as the Hague Conference International Centre for Judicial Studies and Technical Assistance.

Ms Ely (Senior Legal Officer) traced the expansion of the promotion, education and training programme of the Hague Conference, beginning in 1998. She explained that these programmes at the global, regional and national levels have been designed in close consultation and co-operation with Members of the Organisations and States Parties to Hague Conventions.

Ms Ely referred experts to the Special Programme for Latin American States focused on reinforcing the operation of Hague Conventions and promoting the participation of Latin American States in the work of the Hague Conference. She recognised the work of Mr Goicoechea (Liaison Legal Officer for Latin America) in this regard, and drew attention to Preliminary Document No 14 outlining the Special Programme.

Ms Ely referred to ongoing regional work in Southern and Eastern Africa, as well as the Malta Process and the development work for the Asia Pacific region. She discussed initiatives undertaken under the Supplementary Budget in consultation with Members of the Organisations and referred experts to Preliminary Document No 16, which clearly sets out the specific costs associated with different initiatives. She expressed sincere appreciation for the ongoing support from Members of the Organisations.

The Deputy Secretary General noted that the development of the Hague Conference International Centre for Judicial Studies and Technical Assistance would facilitate post-Convention services. On this occasion, he thanked the relevant authorities from the Netherlands, who, thanks to their financial support, made possible the creation of this Centre. He emphasised that the Centre is not a new distinct structure. He specified that its creation constitutes a manner of rationalising the post-Convention services and that the Centre will have a well-defined role to support, on one hand, the initiation of new programmes, and on the other hand, the ongoing programmes on the Conventions.

Experts indicated support for the Centre and expressed the hope that the Permanent Bureau would be able to continue this initiative.

The Chair turned the floor over to Mr Lortie (First Secretary) to say a few words in relation to the organisation of the work of the Hague Conference.

IX. ORGANISATION OF THE WORK OF THE CONFERENCE (SEE FINAL ACT, NINETEENTH SESSION UNDER B)

14. The Strategic Plan

Mr Lortie (First Secretary) discussed the Strategic Plan and reported on progress by the Secretariat. He indicated that one of the strategic directions is toward increasing the global coverage of the Hague Conference and noted that there are currently 125 States Parties to at least one Hague Convention. He mentioned that one of the ways of attaining this objective is to increase participation of States in the work of the Conference in organising seminars. Mr Lortie remarked that to increase the global coverage, it is necessary to achieve visibility through the Organisation's website and through international internships. He highlighted efforts of the Permanent Bureau to create documentation centres in the world in order to facilitate access to documents from the Conference. Mr Lortie also mentioned the need to be selective about projects to develop and the improvement of post-Convention services. He also emphasised improvements in work related to information technology and developments in relation to the Judges' Newsletter. He mentioned the need to improve work methods while reducing costs, for example, through videoconferencing, liaisons with inter-governmental and non-governmental organisations, information management plans, and electronic library implementation plans. He drew attention to the collaboration between the Peace Palace Library and the Permanent Bureau and highlighted the work undertaken by Mr Lalleman (Information Management Assistant).

Several experts commended the Permanent Bureau on the quality of its Strategic Plan.

An expert from Canada encouraged the Permanent Bureau to seek cost-effective measures and congratulated the Permanent Bureau for its goal of increasing global coverage and maintaining an appropriate balance between new Conventions and assistance with respect to existing Conventions.

15. Proposed Budget for Financial Year LIII (1 July 2007 – 30 June 2008)

The Secretary General indicated that the proposed Budget for Financial Year LIII was being submitted to experts for information purposes only and that it would be up to the Council of Diplomatic Representatives to take a decision on the Budget. With respect to the Regular Budget, the Secretary General proposed a modest increase in contributions of 4.75%. He enumerated several reasons for the proposed increase: the rise in salaries according to the scales of the coordinated organisations, the need for increased support to the office of the Secretary General, the need for more resources to carry out the extensive work programme presented; rising housing expenses and the need for extra resources for Information and Computer Technology. He raised the additional matter of negotiating with the European Community as to contributions for additional administrative costs resulting from its accession and hoped to submit a proposal in that regard before July.

16. Supplementary Budget for Financial Year LIII (1 July 2007 – 30 June 2008)

The Secretary General invited Members of the Organisation to contribute approximately 800,000 Euros on a voluntary basis. He discussed the three parts of the Supplementary Budget referred to in Preliminary Document No 16. He explained that a large part of Permanent Bureau activities operated under the Supplementary Budget and therefore depended on the voluntary contributions of Members of the Organisation. He invited Member States to continue to provide financial support to enable the continuation of the projects outlined under the Supplementary Budget.

The Chair thanked the Secretary General for his overview of the proposed Budget and Supplementary Budget and invited experts to comment on these proposals, reminding them that a decision in this regard was not to be taken today.

A few experts commended the Permanent Bureau for its comprehensive documents on the Budget and Supplementary Budget.

Several experts expressed concerns over the proposed increase in the Budget and were of the view that priorities must be reviewed and redefined, particularly in light of policies of zero nominal growth for international organisations.

A few experts indicated that the increase in the Budget could be acceptable. An expert commented that a 3% Budget increase would be more justifiable and indicated a desire to review the proposed Budget to make sure resources are being properly allocated.

An expert from the United States of America questioned the shift of the executive assistant to the Secretary General, whose salary was paid last year in equal shares from the Supplementary Budget and the regular Budget. He also questioned whether a new Legal Officer position was necessary and the nature of the tasks assigned. Finally, he inquired about the increase in Information and Computer Technology costs and the need for funding scanning.

A few experts inquired as to the nature of unforeseen expenses listed in the proposed Budget.

The Chair invited the Secretary General to respond to expressed concerns.

The Secretary General thanked the experts for their interventions. He explained that zero growth is difficult to apply in the context in which the Hague Conference works. He explained that the Organisation had undergone a period of rapid expansion (40% increase of the number of Member States in these last years) and that the Hague Conference is attracting growing interest from around the world. He remarked that the new accessions to Hague Conventions represent an increase in the work of the Permanent Bureau, since many of the acceding countries require support for the implementation of the Conventions.

In response to questions posed, the Secretary General indicated that managerial tasks have continued to grow and that the increase in the Budget in this regard is necessary. He explained in details why the new Legal Officer position was needed and undertook to provide details regarding the item "unforeseen expenses" at a later date to the experts who had raised the question in this regard. The Secretary General invited experts to assist the Permanent Bureau in redefining its priorities, if possible.

The Secretary General indicated that almost every ratification or accession implies extra work for the Permanent Bureau. He reminded experts that the Organisation was created when its function as provider of post-Convention services was not foreseen and that the creation of such an Organisation today could not possibly be effectuated from the same basis. He noted that at some point it would be necessary to re-evaluate the structure of the Organisation so that it can continue to function effectively.

Mr Lortie (First Secretary) commented in relation to Information Computer and Technology issues that the Hague Conference takes good care to develop a stable budget for such issues. He indicated that this item of the Budget was reduced by 16,000 Euros the previous year. He explained that a scanner for optical character recognition is required in order to be able to have a format that is searchable on a keyword basis, all the files of the Organisation.

The meeting closed at 6.55 p.m.

Council on General Affairs and Policy of the Conference (2-4 April 2007)

HccH
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 5

Distribution: by e-mail

MEETING OF WEDNESDAY 4 APRIL 2007 – MORNING / AFTERNOON SESSION

The meeting opened at 9.45 a.m. under the Chairmanship of Mr Antti Leinonen (Finland).

X. CO-OPERATION WITH OTHER INTERNATIONAL ORGANISATIONS

17. Co-operation with UNICTRAL and UNIDROIT

Mr Bernasconi (First Secretary) presented the co-operation between the Hague Conference and UNIDROIT and UNCITRAL regarding issues linked to the 2006 Securities Convention.

Mr Lortie (First Secretary) drew attention to the close co-operation with UNCITRAL regarding the issue of medium neutral text in view of the future Convention on Maintenance Obligations. He added that the Hague Conference is involved in the UNCITRAL authentication project.

Ms Schulz (First Secretary) informed the participants of the proposal of the Hague Conference to establish co-operation in the field of information management and access to library resources between the three sister-organisations.

The Secretary General noted the growing co-operation and drew attention to Working Document No 3 submitted by the Permanent Bureau, the first overview of all the Conventions and other instruments drawn under the auspices of the three sister-organisations.

18. Co-operation with other international organisations

The Secretary General noted that there was growing co-operation with regional organisations in Africa, such as the African Union and the Southern African Development Community (SADC), and in Latin America, such as Organization of American States (OAS), including the Inter-American Children's Institute (IIN) and Mercosur. He referred to the very friendly relationship with the *Commission Internationale de l'état civil* (CIEC). He also added that there was increased co-operation with non-governmental organisations such as the International Association of Women Judges (IAWJ), the *Union internationale du notariat latin (UINL)* and the International Chamber of Commerce (ICC).

Mr Lagarde, Secretary General of the *Commission internationale de l'état civil* (CIEC) indicated that the CIEC continues to take care not to prejudice any future work of the Conference.

Mr Bernasconi (First Secretary) informed the participants that the Hague Conference co-operated with the United Nations' Environmental Programme (UNEP) for the elaboration of a liability regime for damages resulting from the use of biotechnologies between the States Parties to the Cartagena Protocol for Biosafety.

VIII. FUTURE WORK OF THE HAGUE CONFERENCE

The Chair invited the participants to revisit the issue of future work of the Hague Conference since the Maintenance project was coming to end this year.

Decisions on matters pertaining to the Agenda of the Hague Conference

a) Questions of private international law raised by the information society, including electronic commerce

Mr Lortie and Ms Schulz (First Secretaries) explained that this question is also linked to questions of intellectual property. It is a "horizontal" theme that affects practically all the other topics studied by the Conference. It would be useful to maintain it on the agenda so as to enable the Hague Conference to examine it with a view to possible work in the future.

The Chair noted that there were no objections to retain the subject on the Agenda of the Hague Conference.

b) Conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage

The Chair noted that there were no objections to retain the subject on the Agenda of the Hague Conference.

c) Jurisdiction, and recognition and enforcement of decisions in matters of succession upon death

The Chair noted that there were no objections to retain the subject on the Agenda of the Hague Conference.

d) Jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples

Many experts expressed their wish to retain the subject.

One expert asked whether this subject extended to include registered partnerships.

Mr Lagarde, Secretary General of the *Commission internationale de l'état civil* (CIEC) reminded the Council that the *Convention on Registered Partnerships* adopted on 22 March 2007 was open for signature to all States.

The Deputy Secretary General apologised for not having circulated the comparative study on jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples prepared by Ms Caroline Harnois, former Legal Officer at the Permanent Bureau. He indicated that it should be ready before the end of the year.

e) Assessment and analysis of transnational legal issues relating to indirectly held securities and security interest, taking into account in particular the work undertaken by other international organisations

The Chair noted that there were no objections to retain the subject on the Agenda of the Hague Conference.

Topic informally suggested to the Permanent Bureau – legal issues relating to economic migrants (Prel. Doc. No 23)

The Secretary General presented the content of Preliminary Document No 23 and thanked Ms Carmen Azcárraga Monzonis and Ms Barbara Liegel, interns at the Permanent Bureau, for their contribution to the document. He indicated that the initiative for a world forum on

migration proposed by former United Nations' Secretary General, Mr Kofi Annan, was a strong indication of the necessity for international co-operation. He added that the idea was not to make this topic a Hague Conference topic *per se* but rather to draw attention to it and find ways to contribute towards a solution by using Hague Conference techniques.

Some experts expressed their concerns for this subject explaining that it had a strong political character; that the issue was outside the scope of the Hague Conference; or that they preferred to reserve this question to discussions on a regional level. Other experts insisted that the global character of migration justified that the Hague Conference explore this question within the limits of its competence. They added that the Hague Conference had been successful in dealing with politically sensitive issues in a rational manner in the past.

The Chair concluded that there was strong support for retaining the topic of discussion for further examination.

Feasibility studies

The experts expressed their gratitude to the Permanent Bureau for its work on the three feasibility studies.

- *Choice of law in international contracts*

Some experts indicated that there is potential benefit for this issue; others expressed their reluctance. The majority agreed that more information was required in order to make a decision.

The Chair invited Members who have not already done so to respond to the Questionnaire concerning choice of law in international contracts and to provide comments on the existing feasibility study (Prel. Doc. No 22) by the autumn 2007 with a view to further discussion of the topic at the spring 2008 meeting of the Council.

- *Cross-border mediation in family matters*

The majority expressed support for the work of the Hague Conference on this issue and agreed that further research was welcomed.

The Chair invited Members to provide comments on the feasibility study on cross-border mediation in family matters (Prel. Doc. No 20) before the end of 2007 with a view to further discussion of the topic at the spring 2008 meeting of the Council.

- *Cross-border co-operation concerning the treatment of foreign law*

The experts agreed that the issue of treatment of foreign law was an interesting one but that further information was necessary in order to make a decision.

The Chair therefore, invited the Permanent Bureau to develop a questionnaire as suggested in the feasibility study on the treatment of foreign law (Prel. Doc. No 21) with a view to identifying practical difficulties in accessing the content of foreign law and determining the areas of foreign law for which information is required. The Chair indicated that this questionnaire will also invite Member States to comment on the models suggested in the Report and their possible implementation. He informed the participants that the responses should be returned to the Permanent Bureau before the end of 2007 with a view to further discussion of the topic at the spring 2008 meeting of the Council.

The Chair concluded that the Council reserved its position on the ultimate priority to be attached to each of the possible subjects for future work referred to above, as well as on the possibility of adding other subjects and otherwise revisiting the list at a later meeting. In this respect, the Chair invited the Permanent Bureau to continue its exploration of the application of certain private international law techniques to certain aspects of international migration.

The Chair then explained the draft Recommendations and Conclusions submitted to the Council. He pointed out that some of these Recommendations and Conclusions were to a large extent the same as those adopted last year.

RECOMMENDATIONS AND CONCLUSIONS

- *Paragraph 1*

This paragraph on the admission of the European Community raised no objections.

- *Paragraph 2*

The Chair indicated that this conclusion was identical to the conclusion adopted the previous year with the exception of a few technical modifications. There were no comments made to this conclusion.

- *Paragraphs 3, 4 and 5*

An expert from the United States of America requested clarification as to whether the steps identified in paragraphs 3, 4, and 5 were the only ones envisaged by the Permanent Bureau and reminded that there was an intervention regarding the possibility of a second meeting of experts in relation to the treatment of foreign law, which is not reflected in the conclusions.

The Chair responded that the measures outlined in paragraphs 3, 4, and 5 are minimally what can be expected as future work of the Permanent Bureau. He emphasised that this did not exclude the possibility of exploring other themes not mentioned in these paragraphs, such as the holding of a second meeting of experts relating to the treatment of foreign law. The Chair reminded experts, however, that it was not yet certain whether this would be necessary.

Mr Bernasconi (First Secretary) indicated that there might be a practical problem associated with having a second meeting of experts on the treatment of foreign law. He explained that if the Permanent Bureau gets responses to its Questionnaire by the end of the year and plans to report on responses received, difficulties in scheduling a second meeting of experts might arise.

The Secretary General remarked that it had been the view of the meeting of experts itself that without supplementary documentation for the consideration of experts, another meeting of experts would not be very useful. He emphasised, however, that the Permanent Bureau will be remaining in contact with the experts.

An expert from Spain stated that clarification was required at paragraph 5 as to which report was being referred to.

The Chair remarked that it would be preferable to refer to the term 'feasibility study', referring to Preliminary Document No 21, rather than using the term 'report'.

- *Paragraph 6*

The Chair recalled the participants that there would be no discussion on the order of priorities as this would be addressed at a later stage.

A few experts (United Kingdom, Poland, Belgium) were of the opinion that paragraph 6 was not sufficiently clear regarding future work, as it was decided to pursue three major themes (those mentioned at paragraphs 3 to 5), which should not be placed on the same footing as other topics elaborated at paragraph 2. Some experts felt that the words 'referred to above' should be replaced by a reference to paragraphs 3, 4 and 5. An expert commented on the necessity to come to some agreement on the themes that the Hague Conference should explore.

The Chair explained that the words 'referred to above' included Recommendations and Conclusions at paragraph 2. He reminded experts that the themes elaborated at paragraph 2 gave a mandate to the Permanent Bureau to participate in meetings about these themes organised by other organisations. He indicated that all of the possible future topics should be addressed at another meeting on the future work of the Hague Conference.

Many experts preferred the text as drafted, as no decision had been taken on priorities during the General Affairs and Policy Council Meeting and the wording of the paragraph allowed for the possibility of adding other subjects and otherwise revisiting the list at a later meeting.

An expert from Switzerland suggested a rearrangement of the text of the Recommendations and Conclusions to reflect the priorities of the Permanent Bureau. In particular, she suggested, under the heading 'Future Work', to begin with paragraphs 3, 4 and 5 concerning the feasibility studies on cross-border mediation in family matters, the choice of law in international contracts and the treatment of foreign law. This suggestion was supported by another expert.

The Chair thanked the expert from Switzerland for her suggestion, which he found would be acceptable, as it did not modify the substance of the text, but expressed hesitation in rearranging the text, as he felt this was not a major issue.

An expert from Peru suggested that reference be made to Preliminary Document No 23.

The Chair understood the concerns of certain experts and suggested adding the following after "work referred to above" in order to make specific reference to paragraphs 3 to 5: "in particular those mentioned in paragraphs 3 to 5". He emphasised that this suggestion did not exclude the possibility of adding other subjects and otherwise revisiting the list at a later meeting. He also proposed to accept the addition of the reference to Preliminary Document No 23. There were objections to these proposals.

Information technology systems in support of Conventions

- *Paragraph 7*

The Chair remarked that this paragraph was similar in content to a Recommendation and Conclusion of the previous year. There were no comments on this paragraph.

Post-Convention services and regional developments

- *Paragraphs 8, 9 and 10*

The Chair indicated that these paragraphs were also similar in content to Recommendations and Conclusions of the previous year, with the exception of paragraph 9, referring to the Hague Conference International Centre for Judicial Studies and Technical Assistance.

Draft Convention on the international recovery of child support and other forms of family maintenance

- *Paragraph 11*

An expert from Spain suggested adding to this paragraph that the Diplomatic Session will be held in November.

The Chair approved of this modification.

Other questions

An expert from Poland raised an unrelated issue regarding the budget. He requested that the Permanent Bureau provide answers to questions that it had not been possible to pose during discussions on the Budget in advance of the meeting of the Council of Diplomatic Representatives, scheduled for the beginning of July, so as to allow time for informing financial authorities.

The Secretary General assured experts it was still possible to raise such questions and that answers would be sent to delegations before the meeting of the Council of Diplomatic Representatives.

The Chair suggested that in the future, Budget-related questions be addressed to the Permanent Bureau in advance of the meeting so that the Permanent Bureau can prepare its responses.

Many experts thanked the Chair for the manner in which he presided over the General Affairs and Policy Council Meeting.

The Chair thanked experts for their work over the course of the three days. He thanked the Permanent Bureau for its work and emphasised that the work was incredible despite limited resources. In closing, he thanked the interpreters and the administrative staff.

The meeting closed at 14.25 p.m.